United Nations A/61/333

General Assembly

Distr.: General
12 September 2006

Original: English

Sixty-first session
Item 65 of the provisional agenda*
Right of peoples to self-determination

Universal realization of the right of peoples to self-determination

Report of the Secretary-General**

Summary

In its resolution 60/145, the General Assembly requested the Secretary-General to report to the Assembly at its sixty-first session on the question of the universal realization of the right of peoples to self-determination. The present report has been prepared in accordance with this request. It contains a summary of the developments relating to the consideration by the former Commission on Human Rights of the subject matter and the referral of the relevant reports by the final session of the Commission to the newly established Human Rights Council for consideration. It also outlines the reply of the Government of Mexico to the note verbale addressed by the Secretary-General to Member States as well as the relevant jurisprudence of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights on the treaty-based human rights norms relating to the realization of the right of peoples to self-determination.

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* A/61/150.

** The present report was submitted after the deadline to incorporate information received recently.

06-51898 (E) 041006

I. Introduction

1. In its resolution 60/145, the General Assembly requested the Commission on Human Rights to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation, and requested the Secretary-General to report on this question to the Assembly at its sixty first session. This report is prepared pursuant to paragraph 6 of resolution 60/145.

2. On 10 May 2006, the Secretary-General addressed a note verbale to the Member States seeking information on the above-mentioned resolution. By 20 August 2006, the Office of the High Commissioner for Human Rights (OHCHR) had received one reply to the note verbale, from the Permanent Mission of Mexico to the United Nations, a summary of which is included in this report.

3. This report contains a summary of the developments at the sixty-second session of the Commission on Human Rights and the first session of the Human Rights Council, as well as a summary of the recent concluding observations of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, based on their consideration of the periodic reports submitted by the States parties under, respectively, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, in respect of the implementation of the right to self-determination guaranteed in article 1 of the two Covenants.

II. Consideration of the question of realization of the right of peoples to self-determination by the Commission on Human Rights

4. The Commission on Human Rights considered the question of the right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation under a specific agenda item. Subjects considered under this item of the agenda of the sixty-first session of the Commission included the situation in occupied Palestine and the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

5. On 3 April 2006, the General Assembly adopted resolution 60/251, replacing the Commission on Human Rights by the Human Rights Council. At its sixty-second and last session, the Commission adopted resolution 2006/1, entitled "Closure of the Work of the Commission on Human Rights", which referred all reports, including those dealing with the right of peoples to self-determination, to the Human Rights Council for consideration at its first session in June 2006.

6. At the first session of the Council, held from 19 to 30 June 2006, the Council adopted decision 7/102 in which it decided to consider at its next session the reports of all special procedures submitted to the sixty-second session of the Commission on Human Rights, including the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination (contained in document E/CN.4/2006/11 and Add.1).

7. By its decision 7/2 of 29 June 2006, the Human Rights Council adopted the United Nations Declaration on the Rights of Indigenous Peoples, which recognizes the right of indigenous peoples to self-determination, and recommended its adoption by the General Assembly. Article 3 of the Declaration provides that "[i]ndigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". Moreover, article 4 stipulates that "[i]ndigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions".

8. With relevance to the issue of self-determination, the Council also held a special session on 5 and 6 July 2006, which considered the human rights situation in the occupied Palestinian territories.

III. Concluding observations of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights

9. The principle of self-determination is enshrined in Article 1, paragraph 2, of the Charter of the United Nations. Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) affirm the right of all peoples to self-determination, and lay upon States parties, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, the obligation to promote the realization of that right and respect it, in conformity with the provisions of the Charter.

10. During the reporting period, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have addressed the right to self-determination in their consideration of States parties' periodic reports submitted respectively under article 40 of ICCPR and articles 16 and 17 of ICESCR. A summary of these observations is presented in the following sections.

A. Concluding observations of the Human Rights Committee

11. Most recently, the Human Rights Committee addressed some issues related to the right to self-determination in its concluding observations on Brazil and Canada, in the context of indigenous peoples.

12. In its concluding observations on Brazil, adopted on 2 November 2005, the Human Rights Committee stated that it "is concerned about the slow pace of demarcation of indigenous lands, the forced evictions of indigenous populations from their land and the lack of legal remedies in order to reverse these evictions and compensate the victimized populations for the loss of their residence and subsistence (articles 1 and 27)" and recommended that the "State party should accelerate the demarcation of indigenous lands and provide effective civil and criminal remedies for trespass on those lands" (CCPR/C/BRA/CO/2, para. 6).

13. In its concluding observations on Canada adopted on 27 and 28 October 2005, the Committee, "while noting with interest Canada's undertakings towards the

establishment of alternative policies to the extinguishment of inherent aboriginal rights in modern treaties, remains concerned that these alternatives may in practice amount to extinguishment of aboriginal rights (articles 1 and 27)" and recommended that the "State party should re-examine its policy and practices to ensure they do not result in extinguishment of inherent aboriginal rights. The Committee would like to receive more detailed information on the comprehensive land claims agreement that Canada is currently negotiating with the Innu people of Quebec and Labrador, in particular regarding its compliance with the Covenant" (CCPR/C/CAN/CO/5, para. 8)

14. The Human Rights Committee also stated that it "is concerned that land claim negotiations between the Government of Canada and the Lubicon Lake Band are currently at an impasse. It is also concerned about information that the land of the Band continues to be compromised by logging and large-scale oil and gas extraction, and regrets that the State party has not provided information on this specific issue (articles 1 and 27)". The Committee recommended that "the State party should make every effort to resume negotiations with the Lubicon Lake Band, with a view to finding a solution which respects the rights of the Band under the Covenant, as already found by the Committee. It should consult with the Band before granting licences for economic exploitation on the disputed land, and ensure that in no case such exploitation jeopardizes the rights recognized under the Covenant" (ibid., para. 9).

B. The Committee on Economic, Social and Cultural Rights

15. The Committee on Economic, Social and Cultural Rights addressed relevant aspects of the right to self-determination (article 1 of ICCPR). For instance, in its concluding observations on Morocco adopted on 19 May 2006 (E/C.12/MAR/CO/3, forthcoming), the Committee noted with regret that important points raised in its concluding observations in 2000 (E/C.12/1/Add.55) remained subjects of concern. The Committee continued to be concerned that no clear solution had been found to the issue of self-determination for the people of Western Sahara and encouraged Morocco to make every effort to find a clear and definitive solution. The Committee further noted with concern reports of the straitened circumstances endured by people displaced by the conflict in Western Sahara, particularly women and children who apparently suffer multiple violations of their rights under the Covenant, and urged Morocco to take steps to protect the rights of those displaced persons and to ensure their safety.

IV. States' replies to the note verbale

16. In its reply to the note verbale dated 9 August 2006, the Government of Mexico referred to the "right to autonomy" granted under the federal Constitution of 2001 to the 62 indigenous peoples who represent 12 per cent of the whole Mexican population. The enjoyment of this right was effective at the federal, State, municipal and communal levels.

17. Besides, the following decisions had been taken within the framework of the National Human Rights Programme, approved in 2004, with regard to the role of the federal Mexican administration:

(a) To ensure regular consultations with the indigenous villages and communities by the federal executive branch on any legal reform, administrative action, development programmes or projects that may have a significant impact on their living conditions;

(b) To promote respect for the cultural and linguistic diversity of indigenous peoples;

(c) To protect the lands of indigenous peoples, and in this respect ensure that the federal judicial branch takes into consideration the customary law of each indigenous community, in accordance with the Constitution;

(d) To encourage the governments of the states to consult with indigenous peoples and reform their constitutions to incorporate the fundamental human rights of indigenous peoples;

(e) To encourage the governments of the states to recognize and respect the indigenous forms of self-government, normative system and other forms of conflict resolution.

18. Mexico had also played an active role in the drafting of the United Nations Declaration on the Rights of the Indigenous Peoples which, in the Government's view, by recognizing the right of indigenous peoples to self-determination, provided the necessary preventive and protection guarantees against oppression and discrimination, as well as access to effective redress for the injustices suffered by indigenous peoples (see para. 7 above).